

These are the Tentative Rulings for Civil Law and Motion matters set for Friday, June 27, 2014, at 9:30 a.m. in the TAHOE DIVISION (Department 14) of the Placer County Superior Court. The tentative ruling will be the Court's final ruling unless notice of appearance and request for oral argument are given to all parties and the Court by 4:00 p.m., Thursday, June 26, 2014. Notice of request for oral argument to the Court must be made by calling (530) 584-3463. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit Orders after Hearing to the Court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER TRILLA E. BAHRKE AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 14, LOCATED AT 2501 N. LAKE BLVD., TAHOE CITY, CALIFORNIA.

1. **T-CV-0001515 Captain Jon's vs. Valois, Jay and Margaretha**

Proposed TR:

Plaintiff moves for Summary Judgment.

The Motion was not properly served. On its own motion, the Court takes Judicial Notice of the complete case file in this matter. Defendants Jay Valois and Margaretha Valois appeared in this action November 12, 2009, by a General Denial filed by their Attorney Louis Basile. In March 2013, Mr. Basile moved to be relieved as Counsel of record for Jay Valois, but not for Margaretha Valois. Margaretha Valois has not been dismissed, and Mr. Basile has neither substituted out of the case nor been relieved as her Attorney. Accordingly, Mr. Basile remains Ms. Valois's Attorney of record. The Motion paperwork shows that Mr. Basile was not served with any of the Motion paperwork. Service was thus insufficient.

Additionally, the Motion seeks Judgment against both Defendants but appears to admit that Plaintiff cannot obtain Judgment against defendant Margaretha Valois. The Notice of Motion is directed to "each party and to Counsel of record for each party," without limitation. It states that Plaintiff "will move the Court . . . for Summary Judgment in favor of Plaintiff," without specifying which Defendant or Defendants are the responding parties. The Motion itself states that Plaintiff seeks Judgment "in [its] favor against the Defendants, JAY VALOIS, [sic] MARGARETHA VALOIS." The separate statement and evidence never indicate that the Motion is directed to any other than *both* Defendants, and the proposed order is ambiguous in that it identifies no Defendant or Defendants at all. However, the Motion appears to admit that Margaretha Valois received a discharge in Bankruptcy that included the claims raised in this action. See Motion for Summary Judgment, ¶ 9. See also Notice of Case Management Conference, filed by Counsel for Plaintiff's February 7, 2013 (her bankruptcy filing was approx. October 11, 2012). Accordingly, Judgment cannot enter against Ms. Valois. The Motion was not filed as one for Judgment against Mr. Valois—with a concomitant showing—joined with one for Judgment against Ms. Valois—with a concomitant separate showing. Because it is framed

only as a single Motion against both Defendants, it is denied because it does not show that Plaintiff is entitled to Judgment as a matter of law.

Further, the Motion is insufficient as to the request for prejudgment interest. Entitlement to prejudgment interest under C.C.P. § 3287 and calculation of that interest depend on various facts which may include whether or not damages are liquidated, the date that Plaintiff's entitlement to damages became certain, and the Court's discretion. Here, Plaintiff requests \$27,802.13 in prejudgment interest with no factual showing in support of the damages amount, the method by which damages were calculated, whether they are claimed under § 3287(a) or (b), etc. Plaintiff's showing is legally and factually insufficient for the Court to award prejudgment interest as requested in the Motion.

For the foregoing reasons, the Motion is denied.

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